

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

630 Camp Street, New Orleans, LA 70130

www.lsbme.la.gov



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February 23, 2018

RE: Telemedicine

Dear Doctor:

At its January 2018 meeting, the Louisiana State Board of Medical Examiners (the "Board") considered the inquiries that you submitted by electronic mail.¹ As we understand from your note, you are looking into developing a telepsychiatry program to improve access and care for patients with mental health needs. As a result of your review of the laws and Board regulations, you have questions respecting an advisory opinion posted on the Board's website from March 12, 2014. With apologies for the delay in responding, the Board asked that I thank you for your correspondence and relay its response.

Initially, the Board notes that the March 12, 2014 opinion to which you refer is outdated, has been superseded several times by later controlling authorities and is not, therefore, a good place to start when searching for answers to your questions. That opinion predates the Board's adoption/amendment of its telemedicine rules in 2015 and 2017, as well as a number of changes to the telemedicine law and addresses a time when the law required a licensed healthcare provider to be present with the patient and did not permit the use of audio (without simultaneous video) telemedicine encounters.

The 2014 advice was issued in response to inquiries by Louisiana licensed physicians who advised that they would like to use telemedicine technology to communicate with their patients between regularly scheduled office visits but were unable to do so in strict compliance with the law and the Board's rules. In this context, the Board was advised that such communications would not be employed to: establish a new patient/physician relationship; address any condition that would require a physical examination; prescribe controlled substances; or provide emergent care and that the patient would always maintain the option of being seen by the physician if the patient or physician believed that the complaints warrant a face-to-face interaction and/or physical examination. However, because these communications typically take place when the patient is at home, a member of the physician's staff is unavailable to carry out physician instructions and a licensed health care provider would not be in the room with the patient to assist with the interaction. In response to such inquiries, the Board advised that the use of telemedicine technologies

¹Email,

to La. St. Bd. Med. Exam. (Dec. 13, 2017).

in the manner described would be wholly consistent with the manner that physicians have typically utilized telephone or email to follow-up with their established patients. Further, in its on-going desire to facilitate the use of telemedicine technologies in the delivery of medical care, the Board advised that communicating with established patients between regularly scheduled office visits in the manner described would not, for purposes of enforcement, be considered *telemedicine* provided the conditions described were observed.

While its advisory opinions postings are prefaced with the cautionary note that such opinions “[A]re based upon the Board’s review of a defined set of circumstances provided by the requesting party, and are consistent with the rules and laws at the time the opinion was requested,”² we nevertheless apologize for any confusion that this outdated advice may have caused. Because it is no longer applicable, at its January 2018 meeting, the Board elected to remove the 2014 advisory opinion from its website.

As to your specific questions, we offer the following responses based on controlling law and Board rules:

A. Does this (2014 advisory opinion) mean that the Board does not recognize a telemedicine visit as a clinical encounter?

Response. No. The Board is not of the view that a telemedicine visit does not constitute a clinical encounter. The law and the Board’s rules recognize that a physician-patient relationship can be established by telemedicine,³ provide that the practice of medicine is deemed to occur at the location of the patient⁴ and echo the applicable standard of care provided by law.⁵

B. Must the conditions described in I-IV of the 2014 advisory opinion be present for the telemedicine visit to be equivalent to an office visit?

Response. No. Again, the Board’s 2014 advice was provided in response to a specific set of circumstances and are no longer applicable to the current application of telemedicine. As made clear by the current law⁶ and the Board’s rules,⁷ which detail what is expected and necessary for compliance with respect to the use of telemedicine in this state, the standard of care is the same whether the healthcare services are provided in person or by telemedicine.⁸ Stated differently, if a physician’s treatment of a patient by way of telemedicine would satisfy the prevailing and usually accepted standards of medical practice as those in a traditional face-to-face setting, it would comply with the laws and rules governing telemedicine.

²See LSBME webpage www.lsbme.la.gov, Advisory Opinions, introductory comments.

³LAC 46:XLV.7503 Definition of ‘physician-patient relationship.’

⁴LAC 46:XLV.7507A.

⁵LAC 46:XLV.7505B.

⁶La. R.S. 37:1262(4), 1271(B), 1271.1 and 1276.1.

⁷LAC 46:XLV.7501-7521.

⁸La. R.S. 37:1271B.(2)(a), (4)(b); LAC 46:XLV.7505B.

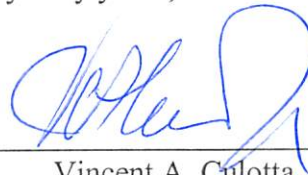
C. Does the physician who sees the patient via telemedicine need to be the same provider who saw the patient for the initial encounter, or can it be another physician member of the hospital team who has access to the patient's initial exam and records?

Response. No. There is no requirement that the physician who sees a patient by telemedicine be the same provider who saw the patient for the initial telemedicine encounter.

Finally, the Board wishes you well with your plans to improve access and care for patients with mental health needs and believes that telemedicine may be effectively utilized to expand availability, accessibility and affordability of medical care to the citizens of this state. That is not to say, however, that physicians will not be presented with medical encounters that cannot be adequately addressed conformably with applicable standards through the use of this technology.

We trust this reply is responsive to your questions. If not, or if we may provide additional information, we invite you to let us know. Otherwise, we remain

Very truly yours,

A handwritten signature in blue ink, appearing to read 'V. Culotta, Jr.', is positioned above a horizontal line.

Vincent A. Culotta, Jr., M.D.
Executive Director

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